IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 572 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

CHUNIBHAI K DATANI

Appearance:

1. Criminal Appeal No. 572 of 1994

MR IM PANDYA, APP, for Appellant-State

MR YOGESH S LAKHANI for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

Date of decision: 04/12/2004

ORAL JUDGEMENT

Instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973, is directed against judgment dated January 13, 1994, rendered by the learned

Judicial Magistrate, First Class, Dwarka, District : Jamnagar, in Criminal Case No.1517 of 1984, by which the respondent is acquitted of the offences punishable under Sections 7 & 16 of the Prevention of Food Adulteration Act, 1954 ["the Act" for short].

2. Mr. M.M.Chaudhary is appointed as a Food Inspector by the Government for the whole of State of Gujarat vide Notification dated July 12, 1984 issued by the Health and Family Welfare Department of the State Government.

3. The respondent is selling milk products in the name and style of "Kailas Dairy" located inside Kharva Darwaja, Dwarka, District : Jamnagar. The Food Inspector visited the shop of the respondent at 8.15 hours on September 11, 1984 and after giving intimation as required by law, purchased 660 milliliters of buffalo milk for analysis. He also paid price of the same, regarding which necessary receipt was issued by the respondent. After purchase of sample, it was divided into three parts and each part was placed in three different clean dry bottles. The samples were thereafter marked, sealed and fastened as required by law. One of the sample bottles was sent to public analyst for analysis, whereas two remaining parts were sent to Local (Health) Authority. The result of the analysis indicated that the sample did not conform with the prescribed standards and was adulterated. The Food Inspector, therefore, applied for written consent. Written consent was accorded by the Local (Health) Authority, which was sent to the Food Inspector along with forwarding letter dated October 22, 1984, which is produced at Exh.19 on the record of the case. After obtaining written consent, Food Inspector filed complaint against the respondent in the Court of learned Judicial Magistrate, First Class, Dwarka. The learned Magistrate ordered to admit the complaint and register it. Accordingly, it was registered as Criminal Case No. 1517 of 1984. The Food Inspector adduced preliminary evidence at Exh.7 and also produced certain documents in support of his case against the respondent.

4. On the basis of the evidence adduced by the complainant, the learned Magistrate framed charge against the respondent at Exh.22. The charge was read over and explained to the respondent, who pleaded not guilty to the same and claimed to be tried. Thereafter the complainant was cross-examined on behalf of the respondent. The complainant also adduced evidence of witness Mohanlal Popatlal as PW.2 at Exh.27, who

according to him, had acted as a panch when the sample of milk was purchased by him from the respondent.

5. After recording of evidence adduced by the complainant was over, the learned Magistrate explained to the respondent the circumstances appearing against him in the evidence of the complainant and his witness and recorded his further statement as required by Section 313 of the Code of Criminal Procedure. In his further statement, case of the respondent was that a false case was lodged against him and that he was innocent. However, no evidence was adduced by him to support his case that he was falsely involved in the case.

6. On appreciation of evidence on record, the learned Magistrate has held that the prosecution has failed to prove its case against the respondent and has acquitted the respondent by judgment dated January 13, 1994, giving rise to instant appeal.

7. This Court has heard Mr.I.M.Pandya, learned A.P.P. as well as Mr.P.N.Gohil, learned advocate appearing for Mr.Y.S.Lakhani, learned counsel of the respondent on record, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. After analyzing, sifting and assessing the evidence on record with particular reference to its trustworthiness and truthfulness by a process of dispassionate judicial scrutiny, this Court finds that there are several deficiencies in the case of the prosecution against the respondent. In the complaint, the complainant has mentioned that he had purchased 600 ml. of buffalo milk from the respondent for analysis, whereas it is stated by the Food Inspector before the Court that he had purchased 660 ml. of milk from the respondent for the purpose of analysis. Though it is mentioned in the complaint that the sample of buffalo milk was purchased, it is not so stated by the Food Inspector in his testimony recorded before the Court. No explanation is given by the Food Inspector that figure of 600 ml. mentioned by him in his complaint was a mistake on his part or a typing mistake. Probably he has stated before the Court that he had purchased 660 ml. of milk only to establish that he had complied with the requirement of Rule 22 of the Rules as it stood then. Thus, the Food Inspector stands contradicted by his own complaint. Further, Section 13(2) of the Act, inter alia, requires that after institution of prosecution against the person from whom

sample of article of food is taken, the Local (Health) Authority should forward, in such a manner as may be prescribed, a copy of result of analysis to such person informing such person that if it is so desired by him, he may make an application to the Court within a period of ten days from the date of receipt of copy of report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. The contents of Exhs.19 and 20 would indicate that the report of the public analyst was forwarded and intimation as required by law was given by the Food Inspector, but not by the Local (Health) Authority. It is not the case of the Food Inspector that he is also appointed as Local (Health) Authority. Rule 9-B of the Rules, inter alia, requires that the Local (Health) Authority shall within a period of ten days after institution of prosecution forward a copy of the report of the result of analysis by registered post or by hand. The record does not show that Local (Health) Authority had forwarded a copy of the report either by registered post or by hand to the respondent. Thus, there is breach of provisions of Section 13(2) of the Act read with Rule 9-B of the Rules. The Food Inspector has claimed before the Court that he had purchased sample of milk in a receptacle, but no evidence is adduced to establish that the same was clean and dry. It is also his case that before taking a sample of milk, he had churned the milk stored in a broad-mouthed steel vessel with a big spoon, but in the complaint, it is stated that the milk was churned with a rod. No evidence is adduced by the Food Inspector to show that the big spoon, with which the milk was churned before the sample was purchased, was clean and dry. It is relevant to notice that the panch witness has not supported the Food Inspector at all. This Court is aware of the principle that conviction can be based solely relying upon the testimony of Food Inspector if it is otherwise found to be trustworthy and reliable and normally the Court should not discard the testimony of Food Inspector merely because the panch witness has not supported the case of Food Inspector. However, in this case, the record would show that several lapses were committed by the Food Inspector while taking sample of milk from the respondent. It is also relevant to notice that in his cross-examination the Food Inspector has stated that he was accompanied by his helper. During his cross-examination, the Food Inspector has admitted that his helper was present when he had taken sample from the respondent. However, for the reasons best known to the complainant, the helper is not examined in the case. In the complaint, the complainant has stated that the milk

was poured in each bottle by a measuring vessel, whereas in his testimony before Court, the Food Inspector has claimed that first of all he had taken the sample of milk in broad-mouthed steel vessel and thereafter it was divided into three parts and poured in each bottle. A bare reading of testimony of Food Inspector shows that there are many inconsistencies and contradictions in his testimony and, therefore, it is not safe to rely upon the testimony of the Food Inspector for the purpose of recording conviction against the respondent. The view taken by the learned Magistrate on the basis of evidence on record cannot be termed either as perverse or unreasonable.

8. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Magistrate who had opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Magistrate, this Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Magistrate and in the opinion of this Court, expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondent. The learned Additional Public Prosecutor has failed to convince this Court to take the view contrary to the one already taken by the learned Magistrate and, therefore, the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed.

(J.M.Panchal,J.)

(patel)